STATE OF MICHIGAN

COURT OF APPEALS

JANET HETZEL,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant-Appellee.

UNPUBLISHED
March 9, 1999

No. 204500
Oakland Circuit Court
LC No. 96-528890 CK

Before: Sawyer, P.J., and Bandstra and R.B. Burns*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). We affirm.

This case was brought by plaintiff for breach of contract and fraud and misrepresentation after she was not allowed to return to work for defendant following a two-year leave of absence. On May 17, 1993, plaintiff signed a request for special leave of absence for dependent care, which stated in relevant part:

> I, Janet Hetzel . . . , hereby make application for a Special Leave of Absence for Dependent Care, effective 5-17-93 . . . and expiring no later than 5-15, 1995 (not to exceed 24 months). I understand and agree that if this leave of absence is granted, it will be subject to the following terms and conditions:
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> * * *
>
> 4. During the first six months of special leave of absence, I am assured of the same employment status I would have if I remained at work.

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* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

5. Following the first six months of special leave of absence, I understand that restoration to employment status, position and pay are not assured.

6. During the special leave, a phased return to work through flexible service employment can be arranged through mutual agreement of management and myself. Restoration to regular employment status is assured during the first six months of this special leave, per item 4 above.

Plaintiff argues that the above agreement was a contract indicating that she could return to work at any time during the two-year leave period through mutual agreement of the parties. She also argues that defendant made an offer to return her to employment through its representatives on April 13 and May 3, 1995, and that she accepted that offer on May 11, 1995, which also formed a contract requiring defendant to return her to work.

The trial court granted defendant's motion for summary disposition on this claim pursuant to MCR 2.116(C)(10) on the basis that there was no contract formed that required defendant to return plaintiff to work after her two-year leave of absence. This Court reviews the grant or denial of a motion for summary disposition pursuant to MCR 2.116(C)(10) de novo. *Eerdmans v Maki*, 226 Mich App 360, 363; 573 NW2d 329 (1997). "When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court must consider the pleadings, affidavits, admissions, depositions, and any other documentary evidence available to it in a light most favorable to the nonmoving party." *Id.* A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the evidence shows that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

First, we do not believe that the leave of absence agreement was a contract that required defendant to return plaintiff to work after she had been on leave for two years. Under the clear language of the contract, *Meagher v Wayne State Univ*, 222 Mich App 700, 721; 565 NW2d 401 (1997), the agreement explicitly states that plaintiff is not assured of "restoration to employment status, position and pay" after the first six months of her leave. Although plaintiff relies on the language that states that during the leave period "a phased return to work through flexible service employment can be arranged through mutual agreement of management and [plaintiff]," that language is specifically followed with the caveat that restoration to regular employment status is only guaranteed during the first six months of the leave. Therefore, the terms of the agreement plainly do not create an obligation on the part of defendant to reemploy plaintiff after a two-year leave of absence.

Viewing the evidence in a light most favorable to plaintiff, we also conclude that the trial court properly determined that defendant's representatives did not make an "offer" in April and May 1995 to return plaintiff to employment. "Before a contract can be completed, there must be an offer and acceptance." *Eerdmans, supra* at 364. Mere discussions cannot be a substitute for the formal requirements of a contract. *Id.* None of the alleged statements clearly or implicitly established that

there was a position to which plaintiff could return. Plaintiff was informed on May 11 and 12, 1995, that there were no positions available to which she could return and that pursuant to the terms of her leave agreement, she was not assured to be placed in any position at that time. Consequently, the trial court properly determined that there was no contract between plaintiff and defendant that required that defendant return her to employment after a two-year leave of absence. Accordingly, the trial court properly granted defendant's motion for summary disposition on plaintiff's breach of contract claim.

Plaintiff also argues that the trial court erred in dismissing her fraud and misrepresentation claim because the assurance given to her by Julia Fowler, defendant's representative, on May 17, 1993, was not a future promise; it was a promise made at that time to induce her into signing the leave agreement. We disagree. The trial court granted summary disposition under MCR 2.116(C)(8), which tests the legal sufficiency of a claim by the pleadings alone. *Smith v Kowalski*, 223 Mich App 610, 612; 567 NW2d 463 (1997). "This Court reviews the trial court's decision on a motion brought under this rule de novo to determine if the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery." *Id.* at 612-613.

In making her claim of fraud and misrepresentation, plaintiff stated in her complaint that when she was asked to sign the agreement at issue in this case, she was "told by Defendant's representative not to worry about not being guaranteed a job after six (6) months because as long as there was at least one (1) contract person doing Plaintiff's job, Plaintiff would have a job with the Defendant." Accepting plaintiff's allegation as true, Fowler's alleged assurance was a future promise and could not be a basis for fraud. *Hi-Way Motor Co v Int'l Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976); *Eerdmans, supra* at 366. Fowler did not make a representation that was predicated on a statement relating to a past or an existing fact. *Hi-Way, supra; Eerdmans, supra*. Rather, she made an alleged statement that, even after six months of leave, plaintiff would be assured of a job that she could return to with defendant, if there were any contract employees working at that time. The statement plainly related to a future event.

Further, the alleged statements made by defendant's representatives in April and May 1995 that plaintiff needed to decide whether to return to work at the end of her leave or quit and that, if she returned she needed to do so by May 15, 1995, also failed to support a claim of fraud. The alleged statements, if accepted as true, were merely the giving of information to plaintiff regarding her various options at the end of her leave period. Moreover, plaintiff does not allege that defendant's representatives ever made any representation to her that there was a position to which she could return. Furthermore, even if the alleged statements were false representations, they were not statements relating to a past or existing fact and were therefore future promises. *Id.*

Plaintiff also claims that the alleged assurance made by Fowler in May 1993, as well as the representations made to her in April and May 1995 that she should return to work by the end of her leave period, amounted to fraud in the inducement. We disagree. "Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon. Fraud in the inducement to enter a

contract renders the contract voidable at the option of the defrauded party." *Samuel D Begola Services, Inc v Wild Bros*, 210 Mich App 636, 639-640; 534 NW2d 217 (1995) (citations omitted).

Plaintiff's fraudulent inducement argument fails because the only possible remedy would be to allow plaintiff to void the contract, which results in the extinction of any possible right plaintiff has to re-employment with defendant. Accordingly, the trial court properly granted defendant's motion for summary disposition on plaintiff's fraud and misrepresentation claim.

We affirm.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Robert B. Burns